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JANET L. CHUBB, ESQ.
Nevada State Bar No. 176
LOUIS M. BUBALA III, ESQ.
Nevada State Bar No. 8974
JONES VARGAS
100 W. Liberty St, 12th Floor
P.O. Box 281
Reno, NV 89504-0281
Telephone: 775-786-5000
Fax: 775-786-1177
Email: jlc@jonesvargas.com
and tbw@jonesvargas.com
and lbubala@jonesvargas.com

Attorneys for Fertitta Enterprises, Inc.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:
USA COMMERCIAL MORTGAGE COMPANY,
Debtor.

USA CAPITAL REALTY ADVISORS, LLC,
Debtor.

USA CAPITAL DIVERSIFIED TRUST DEED FUND,
LLC,
Debtor.

USA CAPITAL FIRST TRUST DEED FUND, LLC,
Debtor.

USA SECURITIES, LLC,
Debtor.

Affects:
☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR
Case No. BK-S-06-10729-LBR

Chapter 11

DECLARATION OF WILLIAM J. BULLARD IN SUPPORT OF ESTATE OF DANIEL TABAS' & FERTITTA ENTERPRISES INC.'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY TO TERMINATE THE LOAN SERVICING AGREEMENT FOR THE DIRECT LOAN TO COLT GATEWAY LLC

Hearing Date:
Hearing Time:

JONES VARGAS
100 W. Liberty Street, 12th Floor
P.O. Box 281
Reno, Nevada 89504-0281
Tel: (775) 786-5000 Fax: (775) 786-1177

1 I, William J. Bullard, declare under penalty of perjury and state as follows:

2 1. I am the Chief Financial Officer at Fertitta Enterprises, Inc. ("Fertitta"), a direct
3 lender to the Colt Gateway LLC loan that was brokered by USA Commercial Mortgage Company
4 ("Debtor"). I have personal knowledge of the facts recited herein, and I am competent to testify
5 regarding them, except with respect to those facts that are on information and belief, and as to
6 those facts, I believe them to be true.

7 2. I make this Declaration in support of Fertitta's Motion for Relief from the
8 Automatic Stay to Terminate the Loan Servicing Agreement for a Direct Loan to Colt Gateway
9 LLC.

10 3. Attached to the motion are true and accurate copies of executed documents that
11 Fertitta received as part of the loan: the original loan agreement (Ex. F); the original promissory
12 note (Ex. G); the original mortgage deed and security agreement (Ex. H); the first amendment to
13 the loan (Ex. I); and the first modification of the mortgage deed, security agreement and
14 promissory note (Ex. J).

15 4. Fertitta does not have a loan servicing agreement with USA Commercial for the
16 loan commonly known as the Colt Gateway loan.

17 5. In December 2002, USA Commercial arranged funding for a \$5.7-million loan for
18 Colt Gateway LLC's commercial development in Hartford, Connecticut. Colt Gateway executed a
19 loan agreement, promissory note, mortgage deed and security agreement with Fertitta (which
20 provided \$3 million), USA Commercial (\$1.35 million), and Debtor USA Capital Diversified
21 Trust Deed Fund, LLC ("Diversified Trust") (\$1.35 million).

22 6. In July 2003, Colt Gateway LLC executed amendments to the loan agreement,
23 promissory note, mortgage deed and security agreement. The loan increased to \$8.7 million, and
24 was funded by Fertitta (\$4 million), Mr. Tabas (\$1 million), USA Commercial (\$1 million), and
25 Diversified Trust (\$2.7 million).

26 7. Fertitta is the largest participating lender in the Colt Gateway loan, and together,
27 Fertitta and the Estate of Daniel Tabas represent more than fifty-seven percent (57%) of the total
28 dollar amount borrowed by Colt Gateway.

1 8. Fertitta did not receive any documents from USA Commercial concerning its
2 transfer of interest in the Colt Gateway loan to USA Capital Diversified Trust Deed Fund, LLC.

3 9. Fertitta has not received notices of delinquencies and/or default for the Colt
4 Gateway loan, or quarterly statements on the loan status.

5 10. Upon information and belief, Daniel Tabas is now deceased and is represented by a
6 probate estate.

7 DATED this 17th day of January, 2007.

8
9 //s//William J. Bullard
10 WILLIAM J. BULLARD

JONES VARGAS
100 W. Liberty Street, 12th Floor
P.O. Box 281
Reno, Nevada 89504-0281
Tel: (775) 786-5000 Fax: (775) 786-1177

CERTIFICATE OF SERVICE

1. On January 17, 2007, I served the following document(s):

**DECLARATION OF WILLIAM J. BULLARD IN SUPPORT OF
ESTATE OF DANIEL TABAS' AND FERTITTA ENTERPRISES, INC.'S
MOTION FOR RELIEF FROM THE AUTOMATIC STAY TO
TERMINATE THE LOAN SERVICING AGREEMENT
FOR THE DIRECT LOAN TO COLT GATEWAY LLC**

2. I served the above-named document(s) by the following means to the persons as listed below:

■ a. **ECF System** (attach the "Notice of Electronic Filing" or list all persons and addresses):

- MICHELLE L. ABRAMS mabrams@mabramslaw.com
- FRANKLIN C. ADAMS franklin.adams@bbklaw.com, arthur.johnston@bbklaw.com
- NANCY L ALLF nallf@parsonsbehle.com,
klawrence@parsonsbehle.com;tthomas@parsonsbehle.com;ecf@parsonsbehle.com
- FRANK A. ANDERSON anderson.frank@pbgc.gov, efile@pbgc.gov
- OGONNA M. ATAMOH oatamoh@nevadafirm.com,
bkecf@nevadafirm.com;paltstatt@nevadafirm.com;sliberio@nevadafirm.com
- KERIANN M ATENCIO ATENCIOK@GTLAW.COM
- BMC GROUP, INC. evrato@bmcgroup.com,
ecf@bmcgroup.com;jmiller@bmcgroup.com;jbartlett@bmcgroup.com
- GEORGANNE W. BRADLEY georganne.bradley@bullivant.com,
mary.opatrny@bullivant.com
- KELLY J. BRINKMAN kbrinkman@gooldpatterson.com
- THOMAS R BROOKSBANK tom@tombrooksbank.com, renee@tombrooksbank.com
- ANDREW M. BRUMBY abrumby@shutts-law.com, rhicks@shutts-
law.com;lmackson@shutts-law.com
- LOUIS M. BUBALA lbubala@jonesvargas.com,
tbw@jonesvargas.com;bjlilingenfelter@jonesvargas.com
- MATTHEW Q. CALLISTER mqc@callister-reynolds.com, maggie@callister-
reynolds.com
- CANDACE C CARLYON ltreadway@sheacarlyon.com, ccarlyon@sheacarlyon.com;
bankruptcyfilings@sheacarlyon.com; rmsmith@sheacarlyon.com
- ROB CHARLES rcharles@lrlaw.com, cjordan@lrlaw.com
- MICHAEL W. CHEN yvette@ccfirm.com
- KEVIN B. CHRISTENSEN kbchrislaw@aol.com
- JANET L. CHUBB tbw@jonesvargas.com
- JEFFREY A. COGAN jeffrey@jeffreycogan.com, sarah@jeffreycogan.com
- WILLIAM D COPE cope_guerra@yahoo.com
- CICI CUNNINGHAM bankruptcy@rocgd.com
- LAUREL E. DAVIS bklsclv@lionelsawyer.com,
ldavis@lionelsawyer.com;gbagley@lionelsawyer.com;ldavisesq@aol.com
- DEBT ACQUISITION COMPANY OF AMERICA V, LLC (tf) tfette@daca4.com
- THOMAS H. FELL BANKRUPTCYNOTICES@GORDONSILVER.COM

JONES VARGAS
 100 W. Liberty Street, 12th Floor
 P.O. Box 281
 Reno, Nevada 89504-0281
 Tel: (775) 786-5000 Fax: (775) 786-1177

- 1 • SCOTT D. FLEMING sfleming@halelane.com,
dbergsing@halelane.com,ecfvegas@halelane.com
- 2 • GREGORY E GARMAN bankruptcynotices@gordonsilver.com
- 3 • WADE B. GOCHNOUR wgochnour@hwmlvlaw.com, donnat@hwmlvlaw.com
- 4 • CARLOS A. GONZALEZ carlos.gonzalez2@usdoj.gov,
Darlene.Ruckard@usdoj.gov;Eunice.Jones@usdoj.gov;Sue.Knight@usdoj.gov
- 5 • GERALD M GORDON bankruptcynotices@gordonsilver.com
- 6 • R. VAUGHN GOURLEY vgourley@lvcm.com
- 7 • TALITHA B. GRAY bankruptcynotices@gordonsilver.com
- 8 • JAMES D. GREENE bknotice@schrecklaw.com
- 9 • MARJORIE A. GUYMON bankruptcy@goldguylaw.com, ddias@goldguylaw.com
- 10 • JEFFREY R. HALL jhall@sheacarlyon.com,
bankruptcyfilings@sheacarlyon.com;aboehmer@sheacarlyon.com;ltreadway@sheacarlyon
11 .com;rsmith@sheacarlyon.com
- 12 • XANNA R. HARDMAN xanna.hardman@gmail.com
- 13 • STEPHEN R HARRIS noticesbh&p@renolaw.biz
- 14 • JEFFREY L HARTMAN notices@bankruptcyreno.com
- 15 • BRIGID M. HIGGINS bankruptcynotices@gordonsilver.com
- 16 • JOHN HINDERAKER JHindera@LRL.com
- 17 • RICHARD F. HOLLEY rholley@nevadafirm.com,
paltstatt@nevadafirm.com;vnelson@nevadafirm.com;sliberio@nevadafirm.com;bkecf@ne
18 vadafirm.com
- 19 • RANDOLPH L. HOWARD rhoward@klnevada.com,
ckishi@klnevada.com;bankruptcy@klnevada.com
- 20 • DAVID W. HUSTON dwh@hustonlaw.net, swaits@hustonlaw.net
- 21 • CHRISTOPHER D JAIME cjaime@waltherkey.com, kbernhar@waltherkey.com
- 22 • EVAN L. JAMES ejameslv@earthlink.net, kbchrislaw@aol.com
- 23 • ANNETTE W JARVIS ajarvis@rqn.com
- 24 • TY E. KEHOE TyKehoeLaw@aol.com
- 25 • ROBERT R. KINAS rkinas@swlaw.com,
jmcbee@swlaw.com;jmath@swlaw.com;imccord@swlaw.com
- 26 • DEAN T. KIRBY dkirby@kirbymac.com,
jhebert@kirbymac.com;lackerman@kirbymac.com
- 27 • ZACHARIAH LARSON ecf@lslawnv.com
- 28 • JOHN J. LAXAGUE jlaxague@caneclark.com
- GEORGE C LAZAR glazar@foxjohns.com, gclazar@sbcglobal.net
- NILE LEATHAM nleatham@klnevada.com,
ckishi@klnevada.com;bankruptcy@klnevada.com
- ROBERT C. LEPOME rlepome@cox.net, smstanton@cox.net
- ANNE M. LORADITCH ecffilings@beckleylaw.com,
aloraditch@beckleylaw.com;pkois@beckleylaw.com
- PATRICIA A. MARR jjllaw@leelaw.lvcoxmail.com,
lvlaw03@yahoo.com;mark@leelaw.lvcoxmail.com
- JAMES C. MCCARROLL , dturetsky@reedsmith.com;aleonard@reedsmith.com
- REGINA M. MCCONNELL rmccconnell@kssattorneys.com
- WILLIAM L. MCGIMSEY lawoffices601@lvcoxmail.com
- RICHARD MCKNIGHT mcknightlaw@cox.net,
gkopang@lawlasvegas.com;cburke@lawlasvegas.com

JONES VARGAS
 100 W. Liberty Street, 12th Floor
 P.O. Box 281
 Reno, Nevada 89504-0281
 Tel: (775) 786-5000 Fax: (775) 786-1177

- JEANETTE E. MCPHERSON bkfilings@s-mlaw.com
- JEANETTE E. MCPHERSON bkfilings@s-mlaw.com
- SHAWN W MILLER bankruptcyfilings@sheacarlyon.com,
 smiller@sheacarlyon.com;aboehmer@sheacarlyon.com;ltreadway@sheacarlyon.com;rsmit
 h@sheacarlyon.com
- DAVID MINCIN mcknightlaw@cox.net,
 gkopang@lawlasvegas.com;dmincin@lawlasvegas.com;cburke@lawlasvegas.com
- JOHN F MURTHA jmurtha@woodburnandwedge.com
- ERVEN T. NELSON erv@rlbolick.com, susan@rlbolick.com
- VICTORIA L NELSON bkecf@nevadafirm.com,
 vnelson@nevadafirm.com;paltstatt@nevadafirm.com;rholley@nevadafirm.com;sliberio@
 nevadafirm.com
- BOB L. OLSON ecffilings@beckleylaw.com,
 bolson@beckleylaw.com;dgriffis@beckleylaw.com
- DONNA M. OSBORN ebaker@marquisaurbach.com,
 dosborn@marquisaurbach.com;tszostek@marquisaurbach.com;kgallegos@MarquisAurba
 ch.com
- ANDREW M. PARLEN aparlen@stutman.com
- DONALD T. POLEDNAK sandplegal@yahoo.com, spbankruptcy@yahoo.com
- PAUL C RAY info@johnpeterlee.com
- CHRISTINE A ROBERTS bankruptcy@rocgd.com
- SUSAN WILLIAMS SCANN sscann@deanerlaw.com, palexander@deanerlaw.com
- LENARD E. SCHWARTZER bkfilings@s-mlaw.com
- JAMES PATRICK SHEA bankruptcyfilings@sheacarlyon.com,
 ltreadway@sheacarlyon.com;rsmith@sheacarlyon.com;aboehmer@sheacarlyon.com
- SHLOMO S. SHERMAN ssherman@sheacarlyon.com,
 aboehmer@sheacarlyon.com;bankruptcyfilings@sheacarlyon.com;ltreadway@sheacarlyon
 .com;rsmith@sheacarlyon.com
- AMBRISH S. SIDHU ecf@lslawnv.com
- JEFFREY G. SLOANE gjklepel@yahoo.com, rmconnell@kssattorneys.com
- ALAN R SMITH mail@asmithlaw.com,
 turk@asmithlaw.com;marsh@asmithlaw.com;darby@asmithlaw.com
- DAVID A. STEPHENS dstephens@lvcm.com
- PETER SUSI cheryl@msmlaw.com, msm@msmlaw.com
- JEFFREY R. SYLVESTER jeff@sylvesterpolednak.com,
 David@sylvesterpolednak.com
- CARYN S. TIJSSELING ctijsseling@beckleylaw.com, jblair@beckleylaw.com
- AMY N. TIRRE ,lleverett@kkbrf.com
- AMY N. TIRRE atirre@kkbrf.com, leverett@kkbrf.com
- U.S. TRUSTEE - LV - 11 USTPRegion17.lv.ecf@usdoj.gov
- GREGORY J. WALCH GWalch@Nevadafirm.com
- RUSSELL S. WALKER rwalker@wklawpc.com,
 eloveridge@wklawpc.com;lboynton@wklawpc.com;ckirk@wklawpc.com
- WHITNEY B. WARNICK wbw@albrightstoddard.com, bstessel@albrightstoddard.com
- WILLIAM J. WRAY wjw@oreillylawgroup.com,
 rh@oreillylawgroup.com,bc@oreillylawgroup.com,lc@oreillylawgroup.com,ddh@oreillyl
 awgroup.com,mr@oreillylawgroup.com
- JOAN C WRIGHT jwright@allisonmackenzie.com, jbrooks@allisonmackenzie.com

- MATTHEW C. ZIRZOW bankruptcynotices@gordonsilver.com
- ANTHONY A. ZMAILA azmaila@nevadafirm.com,
bkecf@nevadafirm.com;mbarnes@nevadafirm.com,paltstatt@nevadafirm.com

■ b. **United States mail, postage fully prepaid** (list persons and addresses):

THOMAS J. ALLISON
USA COMMERCIAL MORTGAGE ET AL.
4484 SOUTH PECOS ROAD
LAS VEGAS, NV 89121

9 c. **Personal Service** (list persons and addresses):
I personally delivered the document(s) to the persons at these addresses:

9 For a party represented by an attorney, delivery was made by handing the document(s) to the attorney or by leaving the document(s) at the attorney's office with a clerk or other person in charge, or if no one is in charge by leaving the document(s) in a conspicuous place in the office.

9 For a party, delivery was made by handing the document(s) to the party or by leaving the document(s) at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

■ d. **By direct email (as opposed to through the ECF System)** (list persons and email addresses):

Frank Merola, Eve Karasik & Christine M. Pajak
fmerola@stutman.com; ekarasik@stutman.com; cpajak@stutman.com

Marc A. Levinson & Lynn Trinka Ernce
malevinson@orick.com;lernce@orrick.com

Andrew Welcher c/o William E. Winfield,
wwinfield@nchc.com

Steven C. Strong, & Douglas M. Monson
sstrong@rqn.com; dmonson@rqn.com

Leonard E. Schwartz
Lschwartz@s-mlaw.com

Susan M. Freeman
sfreeman@lrlaw.com

August B. Landis
Augie.landis@usdoj.gov

Nevada Mortgage Lending Division
Attn: Susan Eckhardt
seckhardt@mld.nv.gov

Based upon the written agreement of the parties to accept service by email or a court order, I caused the document(s) to be sent to the persons at the email addresses listed below. I did not receive, within a reasonable time

after the transmission, any electronic message or other indication that the transmission was unsuccessful.

9 e. **By fax transmission** (list persons and fax numbers):

Based upon the written agreement of the parties to accept service by fax transmission or a court order, I faxed the document(s) to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission is attached.

9 f. **By messenger:**

I served the document(s) by placing them in an envelope or package addressed to the persons at the addresses listed blow and providing them to a messenger for service. (A declaration by the messenger must be attached to this Certificate of Service).

I declare under penalty of perjury that the foregoing is true and correct.

DATED this _____ day of January, 2007.

J. Englehart & Tawney Waldo
Name

//s// Tawney Waldo & J. Englehart
Signature

JONES VARGAS
100 W. Liberty Street, 12th Floor
P.O. Box 281
Reno, Nevada 89504-0281
Tel: (775) 786-5000 Fax: (775) 786-1177